UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN RE:	)	
	)	
MAC HOUSTON VANOVER, JR.	)	**CASE NO. 07-33286**
	)	**CHAPTER 13**
Debtor	)	

UNITED STATES TRUSTEE'S MOTION TO DISMISS WITH A PERMANENT BAR TO FILE UNDER ANY CHAPTER OF TITLE 11

The United States Trustee ("UST"), Nancy J. Gargula, by Robin S. Tubesing, Trial Attorney, pursuant to 28 U.S.C. § 586(a), 11 U.S.C. § 105, 11 U.S.C. § 307, 11 U.S.C. § 349, 11 U.S.C. §521, 11 U.S.C. § 1307(c), 11 U.S.C. § 1321, and Federal Rule of Bankruptcy Procedure 3015, respectfully requests that this Court dismiss this case with a permanent bar to file under any Chapter of Title 11, and in support thereof, states:

Factual Background

1. The Debtor filed a voluntary petition under Chapter 13 on December 19, 2007.

2. The Debtor is presently not represented by counsel.

3. The Debtor is married to Davonna Leigh Vanover.

4. On June 24, 1996 the Debtor and Mrs. Vanover filed a joint Chapter 7 Petition in the Northern District of Indiana and received a discharge in that case, case number 96-38808.

5. On October 14, 2005 the Debtor and Mrs. Vanover filed a joint Chapter 13 Petition in the Northern District of Indiana, case number 05-38808. The case was dismissed on March 6, 2006.

6. On June 27, 2006 Mrs. Vanover filed an individual Chapter 13 Petition in the Northern District of Indiana, case number 06-30770.

7. In case number 06-30770, filed by Mrs. Vanover, the Section 341 Meeting was

continued on July 19, 2006 for failure to provide 341 documents. On August 3, 2006 the Section 341 Meeting was continued for failure to provide 341 documents. On August 30, 2006 the Section 341 Meeting was continued for failure to provide 341 documents. On September 13, 2006 the case was dismissed with a 180-day bar to refile under any chapter of Title 11.

8. On January 23, 2007 the Debtor filed an individual Chapter 13 Petition in the Northern District of Indiana, case number 07-30099.

9. In case number 07-30099, filed by the Debtor, the Section 341 Meeting was continued on February 15, 2007 for failure to file a Plan and provide required 341 documents. The Plan, Schedules, and Forms were never filed in this case, and the case was automatically dismissed on March 12, 2007 pursuant to 11 U.S.C. §521(i)(1).

10. On June 26, 2007 Mrs. Vanover filed an individual Chapter 13 Petition in the Northern District of Indiana, case number 07-31570.

11. In case number 07-31570, filed by Mrs. Vanover, the Section 341 Meeting was continued on July 19, 2007 for failure to file a Plan and provide required 341 documents. On August 15, 2007 the Section 341 Meeting was continued for failure to file a Plan and provide required 341 documents. No plan was ever filed in this case and the case was dismissed on September 10, 2007.

12. The present case was filed by the Debtor on December 10, 2007.

13. In the present case, the Section 341 Meeting was continued for failure to file a Plan and provide required 341 documents on January 17, 2008. On February 4, 2008 the Section 341 Meeting was continued for failure to file a Plan and provide required 341 documents. On February 13, 2008 the Section 341 Meeting was continued for failure to file a Plan and provide 341 documents. On March 20, 2008 the Section 341 Meeting was continued for failure to file a

Plan and provide 341 documents. On April 3, 2008 the Section 341 Meeting was continued for failure to file a Plan and provide 341 documents. On April 10, 2008 the Section 341 Meeting was continued for failure to file a Plan and provide 341 documents. On April 23, 2008 the Section 341 Meeting was continued for failure to file a Plan and provide 341 documents. To date, a Section 341 Meeting has not been conducted in this case. The Chapter 13 Trustee has a pending Motion to Dismiss.

14. In the present case, the Debtor failed to disclose his prior bankruptcies in his Voluntary Petition.

15. In the present case, the Debtor indicated he owned no real estate on Schedule A. However, the Debtor purchased real estate located at 17351 C.R. 48, Syracuse, Indiana, 46567 in 2004.

16. In the present case, the Debtor indicated he has no creditors holding secured claims on Schedule D. However, upon information and belief, the Debtor has at least one mortgage on his real estate located at 17351 C.R. 48, Syracuse, Indiana, 46567 and at least one car note.

17. In the present case, upon information and belief, based on testimony of the Debtor at a Rule 2004 Exam held April 11, 2008, the Debtor did not list all his creditors holding unsecured nonpriority claims on Schedule F and continued to pay these creditors post-petition.

18. In the present case, the Debtor testified at his Rule 2004 Examination that he has an executory contract to sell his residence, which may be valued at between $400,000 and $600,000. The Debtor did not disclose this contract on Schedule G or anywhere else in his petition, and he refused to provide the details of the contract, including the purchaser and the purchase price at his Rule 2004 Examination.

19. In the present case, the Debtor indicated that he had no co-debtors on Schedule H.

Upon information and belief, Mrs. Vanover is a co-debtor on at least one of the Debtor's debts.

20. In the present case, the Debtor indicates he is employed through Opengate Ministries on Schedule I. Upon information and belief, he is not an employee, but is a self-employed pastor operating under Opengate ministries.

21. In the present case, upon information and belief, the Debtor is self-employed doing business under the name "Solutions," which sells various programs to individuals with financial trouble. The services include relief from foreclosure and credit card debt and includes, *inter alia*, the preparation of bankruptcy schedules. The Debtor failed to disclose this self-employment activity as well as all income received from it in his bankruptcy schedules. The UST believes this income may be substantial as individuals have stated to the UST that they have paid anywhere from $600 to $1,200 for his services.

22. Upon information and belief, the Debtor and Mrs. Vanover purchased their current residence in 2004 and have paid little or nothing on their mortgage since purchasing the home and have filed a series of abusive bankruptcies to prevent the foreclosure of their home.

23. Upon information and belief, the Debtor and Mrs. Vanover are working in concert to abuse the bankruptcy system by alternatively filing bankruptcy petitions in their names in order to forestall foreclosure and not pay their mortgage, without any intent to fund a Chapter 13 plan.

24. Upon information and belief, the Debtor is using his own experience with the bankruptcy system to advise and/or assist as many as twenty-eight (28) other individuals with filing one or more abusive bankruptcies solely for the purpose of obtaining the automatic stay to prevent foreclosure. The UST reasonably believes that he advised the following individuals on how to abuse the bankruptcy system by filing a series of abusive bankruptcies solely for the purpose of obtaining the automatic stay without any intention of funding a Chapter 13 Plan or

making mortgage payments:

08-30065	Sheldon Birdsall
08-30108	John Lightner
08-30144	Tony Miller
08-30165	Dorothy Ostrom
08-30170	Robert Rosentreter
08-30173	Lolita Fletcher
08-30230	Matthew Pittman
08-30237	Debra Davis
08-30238	Ron Canen
08-30242	Burley Pater
08-30280	Jeffrey Delaney
08-30281	Teresa Miller
08-30333	Lloyd Whitaker
08-30336	Vera Woolf
08-30369	Melissa Hart
08-30375	James Derek Miller
08-30379	Christina Farley
08-30405	Edath Crace
08-30595	Alejandro Manriquez
08-30808	Isaac Gallion
08-30811	Todd Walls
08-30959	Debra Davis
08-31033	Robin Waggoner
08-31267	Heather Buzzard
08-31259	Gloria Cazaras
08-31260	Michael Solis
08-31293	Deborah Bradley
08-31304	Brannon Wilson

25. Upon information and belief, the Debtor initiated contact with many of the above-named individuals via a flyer either left in their door or sent in the mail that promised to save their homes "without the need for bankruptcy." The Debtor would then arrange a meeting with these individuals and explained to them how to "save" their homes by filing a series of abusive bankruptcy petitions. In several cases the individuals were not aware they were filing for bankruptcy as the Debtor called it an "Intent" or "Intention to Stay." The Debtor advised these individuals that the filings would stop foreclosures and that they would not have to make any mortgage payments in order to "buy some time." He further informed these individuals that they

did not have to list all of their assets and debts, he advised them on repaying their creditors, and he informed them that they could ignore any notices they received from the Court, including attendance at the Section 341 Meeting. The Debtor followed his own advice and failed to list all of his assets and debts; he continued paying certain creditors post-petition, and failed to appear at his 341 Meetings or file and make payments on a plan.

26. Upon information and belief, the Debtor told many, if not all, of these individuals that they could file bankruptcy three times in succession without getting in trouble.

27. At the Rule 2004 Examination of the Debtor conducted on April 11, 2008 the Debtor admitted the purpose of filing the bankruptcies was to "buy some time" and prevent the foreclosure of his home.

Dismissal Under 11 U.S.C. § 1307

28. Pursuant to 11 U.S.C. § 1307(c)(1), "the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including unreasonable delay by the debtor that is prejudicial to creditors."

29. The Debtor's conduct by filing a series of bankruptcies without the intent of funding a plan or paying the mortgage demonstrates an unreasonable delay and is prejudicial to creditors.

30. Pursuant to 11 U.S.C. § 1321, "[t]he debtor shall file a plan."

31. Pursuant to Fed. R. Bankr. P. 3015, "[i]f a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct."

32. Pursuant to 11 U.S.C. § 1307(c)(3), "the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in

the best interest of creditors and the estate, for cause, including failure to file a plan timely under section 1321 of this title."

33. As of the date of this filing, the Debtor has failed to file a plan.

34. In the present case, the Debtor made multiple material misstatements and omissions in his bankruptcy documents, as outlined in paragraphs fourteen (14) through twenty-one (21) of this motion, including failure to disclose prior filings, failure to disclose real estate, failure to disclose all assets and debts, failure to disclose co-debtors, failure to disclose contracts, failure to disclose self-employment activity, and failure to disclose income.

35. The misstatements and omissions in the Debtor's schedules and other documents demonstrates cause for dismissal.

36. The Debtor's conduct in the present case and in his other filings demonstrates that he filed his bankruptcies in bad faith, and that this bad faith is cause for dismissal pursuant to 11 U.S.C. § 1307(a). In re Love, 957 F.2d 1350, 1358-59 (7th Cir. 1992)(stating that "the good faith standard prevents debtors from manipulating the Code for wrongful purposes"); In re Smith, 848 F.2d 813, 816 (7th Cir. 1988); In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999)(stating that the following factors should be considered: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or filed his petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; whether the debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present); In re Earl, 140 B.R. 728, 739 (Bankr. N.D.Ind. 1992)(stating that "it is clear that when a bankruptcy case has been filed only for the purpose of inhibiting or forestalling a foreclosure action on the debtor's assets without the intention of financial rehabilitation, the case should be dismissed as having been filed in bad faith"); In re Walker, 102 B.R. 612, 614-16 (Bankr. N.D. Ohio

1989)(debtor's case dismissed, enjoined from filing any case for one year, and sanctioned $2,000 after filing three petitions in four years and testifying that she did not intend to fund a plan, but only buy time to refinance her mortgage); In re Bolton, 43 B.R. 598, 602-03 (Bankr. E.D.N.Y. 1984)(debtor filed three Chapter 13 cases to defeat foreclosure); In re Perez, 42 B.R. 530, 534 (Bankr. S.D.Tex. 1984)(debtor filed three cases to prevent foreclosure and there was no purpose shown for the filings other than seeking to avoid termination of the automatic stay); Snow v. Jones, 41 B.R. 263, 266-68 (Bankr. C.D.Cal. 1984)(sanctions warranted against debtor where debtor filed six petitions in an effort to defeat foreclosure).

Dismissal With Prejudice (A Permanent Bar to Refile Under Any Chapter of Title 11)

37. Pursuant to 11 U.S.C. § 349(a) and 11 U.S.C. §105, the Debtor should be permanently barred from ever filing under any Chapter of Title 11 for life due to the egregious nature of Debtor's conduct. Chambers v. NASCO, Inc., 501 U.S. 32 (1991); In re Casse, 198 F.3d 327, 339 (2nd Cir. 1999)(Section 109(g) does not impose a temporal limitation upon Section 349(a)); In re Earl, 140 B.R. 728 (Bankr. N.D. Ind. 1992); In re Lerch, 94 B.R. 998,1001 (Bankr. N.D. Ill. 1989)("[t]he clear meaning of this statutory reference under the Code is that unless the court "for cause, orders otherwise," the court may not dismiss a case with prejudice for a period beyond the explicit 180-day limitation found in Section 109(g)"); In re Jolly, 143 B.R. 383, 385-87 (Bankr. E.D. Va. 1992)("so long as the dismissing court finds cause, a bankruptcy action may be dismissed with prejudice for 180 days, or more, without violating the terms of § 349(a), or for that matter, § 109(g)").

38. The UST requests that based on the Debtor's repeated abuse of the Bankruptcy Code in this present case, in his prior cases, Mrs. Vanover's cases, and as many as twenty-eight (28) other cases, the Debtor's case should be dismissed pursuant to 11 U.S.C. §1307 and the Debtor

should be permanently prohibited from filing under any Chapter of Title 11 pursuant to 11 U.S.C. §349.

39. The UST reserves the right to make additional allegations in light of any new evidence that may emerge.

WHEREFORE, the United States Trustee respectfully requests that this Court dismiss this case with a lifetime bar to file under any Chapter of Title 11, and requests all other proper relief.

Respectfully submitted,

NANCY GARGULA
United States Trustee

May 5, 2008

By: /s/ Robin Tubesing
Trial Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served either by the Bankruptcy Clerk's ECF Email System or by First Class United States Mail upon the following, on **May 5, 2008.**

Mac Houston Vanover, Jr.
17351 C.R. 48
Syracuse, IN 46567

Debra Miller, Chapter 13 Trustee
via ECF

/s/ Robin Tubesing

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